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Held at Headquarters, New York, on Tuesday, 21 March 2006, at 10 a.m.

Chairperson: Ms. Chanet

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Second periodic report of the Hong Kong Special Administrative Region of the People's Republic of China (continued) (CCPR/C/HKG/2005/2)

1. *At the invitation of the Chairperson, the delegation of the Hong Kong Special Administrative Region of the People's Republic of China took places at the Committee table.*

2. **The Chairperson** invited the delegation of the Hong Kong Special Administrative Region to respond to the questions posed at the previous meeting by members of the Committee.

3. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that her delegation appreciated the frank and constructive spirit with which dialogue with the Committee had been proceeding. With regard to Mr. O'Flaherty's question on the procedures for consultation and dissemination of the report and related documents, she said that the practice was for the Home Affairs Bureau, which was charged with drafting reports to treaty bodies, to hold consultations with the Legislative Council, relevant non-governmental organizations and the general public regarding drafts of reports to treaty bodies. All relevant documents were posted on the Bureau's website and printed versions of the texts were widely disseminated to libraries and other public outlets. Responding to Mr. Amor's question about an apparent inconsistency between paragraphs 73 and 103 of the report with regard to the Region's implementation of its obligations under international treaties, she pointed out that paragraph 103 dealt with the treaty obligations themselves, which were binding and had for the most part been incorporated directly into legislation, whereas paragraph 73 dealt with implementation of observations by treaty bodies, which were not binding and were implemented to the extent that it was feasible, affordable and necessary to do so in order to achieve the objectives concerned. A good example of how the Hong Kong government had taken steps to follow the advice and observations of treaty bodies in the past could be seen in its approach to specific legislation against racial discrimination, the closing of refugee detention camps, measures to integrate refugees and raising the age of criminal responsibility.

4. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region), responding to questions raised by Mr. O'Flaherty about the interpretation of the Basic Law by the Standing Committee of the National People's Congress, said that interpretation of the Basic Law by the Standing Committee was provided for in the Constitution of the People's Republic of China and in the Basic Law, when fundamental legal and constitutional issues were involved. There had been three such interpretations so far and the procedure in no way affected the autonomy of the Region, its rule of law or the independence of its judiciary. The courts in the Region had also been called upon to deal with a number of less fundamental cases involving the Basic Law. Under article 17 of the Basic Law the Standing Committee was required to consult with the Committee for the Basic Law, which was a joint body with equal numbers of members from the Region and the mainland, before giving its interpretations. Written submissions from the public, political parties and civil society relating to the matters concerned were also made public and taken into consideration.

5. Responding to Sir Nigel Rodley's question as to who had initiated the interpretation of April 2004, he said that the Standing Committee itself had taken the initiative on that occasion, as the issues in question had implications for the future development of the Region, the full implementation of the "one country, two systems" principle and the Basic Law, the relationship between the central Government and the Region and the long-term prosperity and stability of the Region.

6. Sir Nigel Rodley had also wished to know the basis for the Standing Committee's interpretation of April 2004, which had held that there should not be universal suffrage in the 2007 elections to elect the Chief Executive and the 2008 elections to elect the Legislative Council. Summarizing the Standing Committee's considerations in that interpretation, which had been publicly disseminated, he said that the proportion of geographic as opposed to functional constituencies was steadily increasing, showing a trend towards universal suffrage and greater democracy, which reflected the long-term goal of the government. Views in the Region as to the timing for introducing exclusively universal suffrage differed greatly, and the Standing Committee had received input from various sources.

7. Responding to further questions posed by Mr. O'Flaherty with regard to effect of the Standing Committee's April 2004 interpretation concerning the source of initiatives to amend the election process for electing the Chief Executive and the Legislative Council, a matter not clearly spelled out in the Basic Law, he said that the Standing Committee's decision that such initiatives should come from the Chief Executive was consistent with the executive-led system of government in the Region. In response to Mr. O'Flaherty's question as to whether the electoral system was moving forward or backward, he said that constitutional development in the Region had been moving steadily towards universal suffrage in accordance with the Basic Law. That could be seen in the increase in the number of Legislative Council members returned by universal suffrage.

8. The government's package of proposals for the 2007 and 2008 elections had sought to move in the same direction, although it had been rejected in December 2005 by the Legislative Council. Under the proposals 25 per cent of the Election Committee to elect the Chief Executive would have been elected by universal suffrage, as would have been 60 per cent of the seats on the Legislative Council. Although some claimed the government package had not gone far enough, he felt it was the best that could have been achieved within the Basic Law and would certainly not have been a step backwards.

9. Sir Nigel Rodley had also asked about the proportion of members of the Legislative Council elected by universal suffrage who had not supported the government's package. Generally speaking, surveys had shown broad public support for universal suffrage and for the government's package and against the Legislative Council's rejection of the package on the grounds that it lacked a timetable for introducing universal suffrage. Speaking specifically about the Legislative Council decision in December 2005 to reject the government's package, he said that 70 per cent of the members opposed to the package had been elected by universal suffrage, as contrasted with 33 per cent of those in favour.

10. Responding to a question by Mr. O'Flaherty on the functional constituencies, he said that the ultimate aim, enshrined in the Basic Law, was to reach an election system based exclusively on universal suffrage. The functional constituencies, representing various economic, professional and social sectors, were a transitional arrangement. The government package had sought, inter alia, to achieve some progress towards that ultimate aim. The Commission on Strategic Development, chaired by the Chief Executive, was studying the matter of constitutional development and preparing proposals for a universal suffrage system.

11. Responding to a point made by Ms. Wedgwood about the link between personal freedoms and democracy, he pointed out that democracy in the Region was still developing but that all of the freedoms found in more mature democracies were already being enjoyed by the people.

12. **Mr. Allcock** (Hong Kong Special Administrative Region) said that Mr. O'Flaherty had posed a number of questions concerning the Standing Committee's interpretations of the Basic Law. In that connection, he wished to remind the Committee that none of the interpretations had dealt with or affected the protection of rights guaranteed under the Covenant. There were channels and procedures, which had been extensively used in the interpretations so far, for informing the Standing Committee of any relevant matters, including, if need be, issues relating to Covenant rights, and the Standing Committee was also required, under the Basic Law, to consult with the Committee for the Basic Law before issuing an interpretation. As for potential damage to those rights by a future Standing Committee decision, he pointed out that the Government of the People's Republic of China had accepted the international obligations under the Covenant as applied to the Region, which was clearly stated in article 39 of the Basic Law.

13. In response to Mr. O'Flaherty's question regarding protections against the Standing Committee's acting ultra vires in interpreting the Basic Law, he pointed out that the Standing Committee was a permanent body of the National People's Congress, which was the supreme State organ of the People's Republic of China, and its power to interpret laws was enshrined in article 67 of the Chinese Constitution. That power had been reaffirmed in article 158 of the Basic Law of the Region and in a 1999 case before the Hong Kong Court of Appeals, which had found that the Standing Committee's power of interpretation was defined in general and unqualified terms. There seemed, therefore, to be no grounds for speculating whether the Standing Committee might act ultra vires in such matters.

14. With regard to Mr. O'Flaherty's question on the Region's reservation with regard to article 25 (b) of the Covenant, he noted that Mr. O'Flaherty had quoted a statement from a 1995 Hong Kong appeals court case that appeared to support the Committee's view that the reservation should be lifted. The statement in question was not, however, part of the appeals court's decision. The case, which preceded the Region's change of status in 1997, had involved an appeal against an earlier court decision that had found that the functional constituencies were constitutional, and the appeals court had rejected the appeal, finding that the existence of the functional constituencies was constitutional and fully compatible with the Covenant as applied to what was then the dependent territory of Hong Kong.

15. The government of the Region considered that the reservation to article 25 (b) of the Covenant continued to be in force for a number of reasons. First, the reservation should be given its natural meaning, which was that the Hong Kong government, like the Government of the United Kingdom that had entered the reservation originally, reserved the right not to apply article 25 (b) of the Covenant to the extent that it required that the election of a legislative body be by universal and equal suffrage. Secondly, looking at the purpose of the reservation, he said that the Hong Kong government, like the United Kingdom Government before it, wished to be free to introduce changes in the electoral system in a gradual and orderly manner. Thirdly, the reservation avoided the possibility of an absurdity that would frustrate both the purposes of the Covenant and the Region's long-term goals, namely, that a narrow, technical interpretation of the paragraph might allow a government to keep its legislative body partially appointed, i.e. not fully elected, which would circumvent the purpose of universal and equal suffrage without technically violating article 25 (b). Fourthly, the United Kingdom Government, a State party to the Covenant, was on record as stating that it considered the reservation as continuing, even if the Legislative Council were fully elected. Finally, the Government of the People's Republic of China had assumed responsibility for the Covenant as it applied to the Hong Kong Special Administrative Region, but its responsibility could not be greater than that of the previous government, namely, the Government of the United Kingdom.

16. Responding to questions posed by Mr. O'Flaherty with regard to national security legislation and article 23 of the Basic Law, he said that the Hong Kong government had neither a timetable nor any definite plans for reviving consideration of such legislation and that the government had pledged to consult with the public, as it did in all matters, before any legislative proposals would be considered. In that connection, he referred members of the Committee to paragraphs 395 and 396 of the report.

17. In reply to the question regarding the bill on article 23, he said that the current official secrets legislation covered four areas; it remained to be seen for a future bill whether more or fewer areas should be provided for. In the original bill, which had not been enacted, the government had intended to delete the provision on the exercise of powers of search without a court warrant in emergency situations, as well as the provision to the effect that an organization was to be proscribed in the Region if it was a subordinate body of an organization banned on the mainland; that provision had indeed already been subject to certain conditions. In any case, any legislative bill must comply with the Covenant, as stipulated in article 39 of the Basic Law, which also therefore served to ensure all the Covenant rights, including protection of freedom of expression.

18. He agreed with Ms. Wedgwood that common law was not always a good guide to human rights practice and that the current law on treason and sedition was too broad. The government had indeed intended to narrow down such offences in the bill that had not been passed. Nevertheless, such offences were interpreted in the light of the Covenant. In response to Mr. Wieruszewski's concern that the Societies Ordinance and the Public Order Ordinance should be reviewed to ensure compliance with the Covenant, he said that such review was not necessary. They were applied liberally in practice and the restrictions that they allowed for merely replicated those appearing in Covenant articles 19 and 22; in cases brought before the courts, they had been found acceptable. Contrary to what had been suggested in the Committee's 1999 concluding observations, they could not be used unduly to restrict enjoyment of rights under article 21 of the Covenant, since that would run counter to the Covenant and would thus be in breach of article 39 of the Basic Law.

19. On the question of intereceptions of communications, the Chief Executive had refused to sign the 1997 Ordinance on the subject, which had in

any case not been enacted through legislative process. The government had identified many defects in it and wished to review it before deciding whether to bring it into force. The Court of Final Appeal had found that the Chief Executive had acted lawfully in not bringing the Ordinance into effect.

20. He pointed out to Ms. Wedgwood that two thirds support was not usually required for a bill; for most domestic legislation, a simple majority was sufficient. Nor was it true that the current composition of the Legislative Council did not favour liberal reform.

21. The executive order signed the previous year by the Chief Executive was an interim measure on covert surveillance and did not deal with the interception of telecommunications, which was covered by a more wide-ranging bill currently before the Legislative Council. The executive order had been designed solely in the interests of crime prevention and was subject to a proportionality test in that the need for information had to be weighed against the intrusiveness of surveillance. As for the bill, it made a distinction between serious and less serious crimes: a warrant for the interception of communications could only be issued for an offence carrying a maximum penalty of not less than seven years' imprisonment; for covert surveillance, the offence had to carry a maximum penalty of not less than three years' imprisonment. The bill contained provisions on the handling and destruction of materials as well as on safeguarding and access; it provided for arrangements to ensure the destruction of the products of interception and surveillance, which were to be monitored by an independent commission; and it called for the establishment of codes of practice. Disciplinary measures could be taken against any breach of those rules on the part of government officials. The bill expressly said that any products of intercepts were not admissible as evidence in a court but were intended only to serve the purpose of intelligence gathering. It was for the courts to decide, in accordance with common law, whether unlawfully obtained evidence could be used; the main consideration was that it should not affect the fairness of the trial nor entail an abuse of process.

22. It was rare for journalistic materials to be seized; the measure taken to that effect the previous year had been ordered by a judge of the court of first instance on the basis of public interest. The question of proportionality did not arise directly in the application of the relevant statutory provision. A balance had to be found, in the light of case law, between the two aspects of public interest, namely, protection against crime and the protection of the rights of citizens.

23. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) agreed with Ms. Wedgwood that the authorities had a duty to protect Hong Kong citizens outside the Region, without however interfering with judicial process. Where cases arose in mainland China, concerns would be conveyed directly to the mainland authorities; in other countries, they would be relayed through diplomatic channels.

24. In reply to Mr. Solari Yrigoyen's question about human trafficking, she said that the Region was neither a place of origin for such trafficking nor a place of destination for illegal immigrants. Because of its geographical situation and its liberal regime, it did, however, attract immigrants; the authorities were for that reason extremely vigilant and, when necessary, initiated prosecutions. As to whether legal aid and general assistance were extended to the victims of human trafficking, no one could be prevented by lack of means from being duly represented in a court in the Region. If medical care was required and such persons could not pay fees, the authorities could decide to waive them. She acknowledged that the Region did import domestic helpers, mostly from South-East Asia, but through legal channels. They were given two-year contracts, set by the government, and benefited from a minimum wage. They enjoyed the same protection as local workers; if they were required to act illegally or were underpaid, they were encouraged to have recourse to the authorities. Employers were expected to provide them with board and lodging, so that there was no need for them to resort to social security.

25. On the question of whether Falun Gong was registered as a religion, she said that there was no requirement regarding the registration of religious bodies in the Region. The government had no information on the number of practitioners, whether or not belonging to the Falun Gong association. No one was barred from entering the Region on the grounds of their religion. The immigration department, when deciding whether to admit aliens, gave due consideration to all relevant factors, as did immigration authorities elsewhere.

26. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to the Region's

police complaint system, said that it was robust and efficient and on a par with anything that existed elsewhere. Complaints were carefully prepared by the Complaints Against Police Office (CAPO), then submitted to an Independent Police Complaints Council (IPCC); they were also brought to the attention of the Chief Executive. In addition, members of IPCC were able to monitor police investigations and could themselves address any concerns to CAPO. Steps were being taken to make IPCC a statutory body; consultations were under way on the subject.

27. In reply to the question about child pornography legislation, he said that the Ordinance thereon was in line with the Optional Protocol to the Convention on the Rights of the Child and also with International Labour Convention No. 182 on the Elimination of the Worst Forms of Child Labour. Under the Ordinance, a number of arrests had been made and sentences handed down.

28. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to the question put by Mr. O'Flaherty regarding the possibility of a dedicated human rights commission, said that the government considered that, while it was not in principle averse to the establishment of such a body, sufficient safeguards already existed for human rights protection, in particular the Bill of Rights Ordinance, the Ombudsman, the Equal Opportunities Commission (EOC) and other machinery. It would however keep the matter under review. The Commission would indeed be mandated to deal with questions of racial discrimination, once the legislative process was complete; its budget was adequate and compared favourably with similar bodies elsewhere; it did have enforcement powers and could both initiate and conduct investigations. On the basis of various internal reviews undertaken over the years, the view had been reached that it did not need to be replaced but simply strengthened. She disagreed that the Independent Panel of Inquiry on the Commission had not in fact been sufficiently independent; in any case there was no point in re-opening an issue that the government had put behind it.

29. A comprehensive legal framework of family and child protection provisions was in place that covered domestic violence as well. The Hong Kong government was gradually reviewing the Domestic Violence Ordinance, under which restraining orders could currently be issued against spouses, in order to broaden its scope to include court-ordered counselling as a sentencing option, a definition of domestic violence, and the like. The police force took a very serious view of domestic violence. Recently, a system operating through 14 district liaison groups had been put in place to improve communication on case referrals between the Social Welfare Department, the police and non-governmental organizations working in the field. Police training on domestic violence had been enhanced in 2004, and topics such as sensitivity to complaints, victim psychology and conflict management were routinely discussed. Since 2005, a database of previous offenders was available and would help determine appropriate action.

30. The system of voluntary collective bargaining in the workplace encouraged by the government of the Region, underpinned by Labour Department consultancy services, had been working well. The government was aware that its promotion of workers' rights and benefits had to keep pace with the development of its competitive, externally based economy, which would in turn contribute to the advancement of workers.

31. The best safeguard against possible self-censorship by the press in a free and open society like the Special Administrative Region was for its government to create an environment conducive to a free press. It was then up to the media professionals themselves to preserve freedom of information, opinion and advertising.

32. The government had dropped the idea of charging a modest boundary facilities improvement tax, although it did not believe it would have hampered freedom of movement.

33. **Mr. O'Flaherty** asked the delegation to comment on reports that the general public had actually not been involved in the consultative process surrounding the 2004 interpretation of the Basic Law by the Standing Committee of the National People's Congress. Furthermore, he was surprised that the Committee for the Basic Law established under the Standing Committee, a body of such fundamental importance for the Region, had only 50 per cent Hong Kong membership and that it was composed only of lawyers. On the issue of ultra vires actions by the Standing Committee, the delegation had painted a disturbing picture in which absolute power was wielded by a body not elected by universal suffrage. His concern was that

its exercise could raise issues under article 2 of the Covenant and restrict the enjoyment of civil and political rights.

34. Regarding the reservation to article 25 (b) of the Covenant, he referred the government to the Committee's general comment 24 and especially paragraph 19 on the interpretation of reservations, the criteria for which were provided by international law as derived from the Vienna Convention and customary law.

35. He had been pleased to hear that the Equal Opportunities Commission had been given a mandate to deal with race issues but had been disappointed by the other responses concerning the Commission.

36. **Mr. Ando** explained that the Committee was anxious to learn about the observance of human rights in the Hong Kong Special Administrative Region because the Chinese represented one fifth of the world's population and the situation in the Region was a mirror of the future global human rights situation.

37. Even though the Region was not a destination or place of origin for human trafficking, organized syndicates were behind it; and he would like to know if there had been any prosecutions for human trafficking.

38. **Ms. Wedgwood** said that in her earlier questions her concerns had been that the charge of sedition as a bar to immigration into the Region could be used to exclude Falun Gong members, and that the self-censorship by the media had perhaps been induced by signals clearly sent by the mainland authorities that certain information should be suppressed.

39. While the Standing Committee of the National People's Congress did not review particular cases, it nevertheless was the foremost and binding constitutional tribunal. However, it did not look or act like a tribunal: the modern model of a constitutional court was an independent court. Thus, over time, the role of the Standing Committee — its mandate having perhaps been the political price of Hong Kong autonomy — was very troublesome for the principle of "one country, two systems". At most, the Standing Committee should intervene only occasionally and deferentially, so as not to impugn the independence of the Region's legal system.

40. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) said that the only human trafficking case that had been prosecuted in 2004 had been a smuggling case unrelated to prostitution.

41. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region) observed that the Basic Law was a national law, binding on the whole of China as well as on the Hong Kong Special Administrative Region, and the membership of the Committee for the Basic Law simply reflected that reality. The 1990 decision establishing the Committee had stipulated that its 12 members should include persons from the legal profession and thus the membership of lawyers was a requirement.

42. The issues surrounding the 2004 interpretation had been much discussed in the Region at the time and the public debate had gone on for some time. There had been extensive consultations, and all views received from whatever source had been transmitted to the Standing Committee.

43. **Mr. Allcock** (Hong Kong Special Administrative Region) said that the government of the Region was familiar with the Committee's general comment 24 and all the others; in fact, two of the general comments had been cited directly in two separate court cases. It was also familiar with article 19 onwards of the Vienna Convention, on the formulation and acceptance of reservations. The principles he himself had referred to, concerning reservations to articles of the Covenant, were not limited to statutory interpretation; they were almost universally applied principles — that the words should be given their natural meaning, and that the purpose of the reservation should be considered — and could therefore be fittingly invoked.

44. **The Chairperson** invited the delegation to reply to the remaining questions on the list of issues.

Expulsion of aliens; right to enter one's own country; protection of the family and children (articles 12, 13, 23 and 24 of the Covenant)

45. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 17, said that undesirable immigrants subject to removal orders under the Immigration Ordinance were non-permanent residents of the Region whose presence was prejudicial to its interests or general well-being or posed a threat to law and order. To date, the power had not been exercised. It would be difficult to give express criteria for determining that the deportation of an immigrant was conducive to the public good. That power — which had also not yet been exercised — could be used only when the public interest was seriously at stake.

46. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), apprising the Committee of the latest developments relating to refugees and asylum-seekers (question 18 of the list), said that she had been informed that the Office of the United Nations High Commissioner for Human Rights (UNHCR) had just decided to discontinue financial assistance to 80 vulnerable asylum-seekers in the Region. Though the 1951 Convention Relating to the Status of Refugees was not applicable in the Region, its government would, on humanitarian grounds, continue its existing policy of rendering support to those refugees, in the hope that the United Nations would give UNHCR the funds it needed to discharge its obligations in all parts of the world.

47. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 18, said that the Hong Kong government had a firm policy of not granting asylum, given its dense population and the fact that its relative economic prosperity made it a magnet for refugees from the entire Asian region. Claims for refugee status were handled by UNHCR: persons officially recognized as refugees were normally permitted to enter into recognizance pending their overseas resettlement by UNHCR, and persons awaiting UNHCR assessment could also be allowed to enter into recognizance in lieu of detention on a case-by-case basis. That did not, however, constitute permission to remain or to take up employment. Any such persons who were unable to meet their basic needs received welfare in kind from the government. School attendance by children of recognized refugees could be allowed on exceptional humanitarian grounds; there were currently 23 such children in Hong Kong schools. Following the Court of Final Appeal's judgement in the Prabakar v. Secretary for Security case, the government had put in place administrative procedures for assessing claims made under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it believed met the highest standards prescribed by the Court.

48. Turning to question 19, she said that the criteria for eligibility for the right of abode in the Special Administrative Region were set out in article 24 of the Basic Law, which, together with other laws, policies and administrative arrangements on the right of abode, was consistent with the relevant human rights treaties. In January 2002, the Court of Final Appeal had set down key principles for dealing with the outstanding right-of-abode cases before it. By the end of 2005, the Court had disposed of almost all of them: of some 5,000 cases, 4,340 had been dismissed, 238 had been allowed and 420 had been withdrawn. Mainland residents who had no legal right to stay in the Region must return to the mainland unless they were eligible to apply for a one-way permit for settlement. The one-way permit scheme operated on a transparent point system under which priority was given to spouses and dependent children. Since the handover of sovereignty, over 446,000 mainland residents had settled under the scheme, which the government considered a fair and orderly programme to facilitate family reunion.

Right to take part in the conduct of public affairs, right to vote (article 25 of the Covenant)

49. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to question 20, said that the city of Hong Kong was one of the safest and most peaceful in the world, with an extremely low crime rate. Its government protected every member of the community and did not tolerate acts of violence, property damage or criminal intimidation. The police investigated any such allegations and took swift action to uphold the law and protect rights and freedoms. At the same time, any judicial proceedings had to be based on sufficient and concrete evidence.

Prohibition of discrimination and rights of persons belonging to minorities (articles 26 and 27 of the Covenant)

50. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to the rights and benefits under the various labour laws, said that foreign domestic workers (question 21 of the list of issues) were treated no differently from other workers under those laws and were also protected under the various anti-discrimination ordinances. A further protection was the standard employment contract, which required employers to pay foreign domestic workers at least the government-prescribed minimum wage and provide free accommodation, food, medical treatment and return passage. In cases of abuse, free legal aid was available to any foreign worker who met the means and merit test, and the Labour Department worked with non-governmental organizations to provide needed support services. Foreign domestic workers were also covered by the same welfare safety net available to other persons.

51. **Mr. Shearer** said that the Hong Kong Special Administrative Region was unique in that the State party in question — the People's Republic of China — had not acceded to the Covenant but was nonetheless ultimately responsible for its implementation in the Region. In the 10 years since the reintegration of the Region into the People's Republic, the situation had remained largely as envisaged by the historic terms of the British withdrawal. There had been some problems, but by and large the people enjoyed a high level of protection of their human rights; for that, both the Central Government and the government of the Region were to be congratulated.

52. He had several serious concerns, however. He wondered if the Chief Executive's power to order deportation of undesirable immigrants, which remained untested, could in future be used as a means of de facto extradition of mainland Chinese accused of offences on the mainland. No formal extradition arrangements were in place between the Region and the People's Republic. Yet mainland law apparently had extraterritorial effects, allowing the People's Republic to prosecute Hong Kong residents for crimes committed in the Region under mainland criminal law. Should not such cases of concurrent jurisdiction be dealt with under formal arrangements and clear procedures? He also would like to know the justification for maintaining a reservation to article 13 that had been made by the former British authorities, regarding the right of judicial review of deportation orders of lawful residents.

53. With regard to asylum, he was pleased to hear that, following the decision in the Prabakar v. Secretary for Security case, procedures had been put in place for assessing applications for asylum on the grounds that the applicant faced torture if returned to the country of origin. However, the implications of the decision might go even further to the question of refoulement generally in cases where the asylum-seeker, if returned, might be subject to persecution on the grounds of race, religion, nationality or political opinion. Although the Hong Kong Special Administrative Region was not a party to the 1951 Geneva Convention relating to the Status of Refugees, the non-refoulement obligation set forth in article 33 of the Convention had come to be regarded as part of customary international law and thus no longer depended on adherence to the Convention. Many observers had noted that the lack of a formal assessment procedure for asylum-seekers had led to much hardship, including the lack of basic support and medical assistance pending resolution of their claims. On the other hand, the Committee was pleased to learn that when the Office of the United Nations High Commissioner for Refugees (UNHCR) was obliged to end the limited support it had provided to asylum-seekers in the Region, the Hong Kong regional government was willing to fill the gap.

54. With regard to right of abode, the Committee recognized that the Region did not have an unlimited capacity to absorb all who might wish to live there. However, the one-way permit scheme to enable eligible mainland residents to settle in the Region had been widely criticized as lacking uniform, transparent eligibility criteria, thus encouraging bribery and smuggling of persons. Since the eligibility of family members was considered separately, the result was often the splitting of families.

55. **Sir Nigel Rodley** said that he appreciated the frank and articulate responses of the delegation. It was interesting that in the voting on the proposed electoral package, the majority of the public, according to opinion polls, and the majority of the elected members of the Legislative Council were in favour, whereas the majority of non-elected members of the Council were opposed. Members of a legislature would not always vote in accordance with opinion polls, but he wondered if any thought had been given to introducing referendums on some issues. With regard to the purposive element in interpretation of a reservation, it seemed that the Hong Kong government was considering the purpose of the reservation, whereas, in accordance with the Vienna Convention on the Law of Treaties, it was the object and purpose of the Covenant that should be the yardstick for interpretation. Lastly, he wondered whether the Complaints Against Police Office or the Independent Police Complaints Council put out an annual report that could be made available to the Committee.

56. **Mr. Solari Yrigoyen** said that he appreciated the generally excellent responses of the delegation. In one instance, however, with regard to the allegations of inadequate police response to threats and vandalism against legislators of the Democratic Party, the reply had been vague, and he would appreciate further details.

57. With regard to the situation of foreign domestic workers, of which there were many in the Region, the

Committee had heard that the laws regarding minimum wage and other benefits were not always respected. There were many allegations of outright discrimination, particularly with regard to housing, and of indirect discrimination in the strict interpretation of laws to prevent access to public services. Whereas some foreign workers could apply for citizenship after a certain number of years, a foreign domestic worker might work in the Region for 20 years and still not be eligible. He wondered if foreign domestic workers had any opportunity to be enrolled in a pension plan, and he would appreciate an explanation of the two-week rule.

58. **The Chairperson** invited the delegation to respond to the additional questions posed by the Committee members.

59. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region) said that the Basic Law did not provide for the possibility of a referendum. He understood that it was not generally a requirement under the Covenant. The annexes to the Basic Law were clear on the subject of voting procedures and provided that if there was a need to amend the methods for selecting the Chief Executive or forming the Legislative Council such amendments would require the endorsement of a two-thirds majority of the Legislative Council, the consent of the Chief Executive and the approval of the Standing Committee of the National People's Congress. It was true that legislators sometimes took positions not in keeping with public opinion, and it was for them on such occasions to explain their reasons.

60. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region) said that the Independent Police Complaints Council did in fact produce a report, which would be made available to the Committee.

61. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that the Hong Kong government would try to fill the gap for vulnerable refugees and asylum-seekers. It had a policy of helping on a case-by-case basis with housing and other assistance, but was reluctant to offer money for fear of creating an incentive for refugees to come to the Region.

62. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) said that, despite the reservation to article 13 of the Covenant insofar as it conferred a right of review of a decision to deport an alien and a right to be represented for that purpose before the competent authority, the existing mechanism in the Region did in fact provide adequate safeguards for persons facing deportation, who had ample opportunities to make representations against their deportation. In determining whether a deportation order should be made, all relevant circumstances, including the person's connections with the Hong Kong Region and other countries, would be considered, and the most careful consideration would be given to claims that deportees might face the death penalty, torture or inhuman, cruel or degrading treatment as a consequence of their deportation. Any individual served with a deportation order could lodge an objection within 14 days, to be considered by the Chief Executive in Council. Although the individual would not be present at that stage, all written submissions would be considered. If the decision was unfavourable, the individual could apply to the Court for judicial review and was entitled to be present at those proceedings.

63. Concerning the right of abode and the one-way permit scheme, she said that, in accordance with the Basic Law, residents of mainland China wishing to settle in the Region must apply for exit approval under the one-way permit scheme. The system was implemented by the mainland authorities, but the Hong Kong government was in constant contact with them concerning the operation of the scheme, which had been improved over the years to take into account family concerns. The scheme involved a point system, widely publicized in the newspapers and the application offices, under which priority was given to spouses and children under 18 years of age of persons already resident in the Region. Moreover, the mainland authorities published the names of those receiving a one-way permit in the newspapers and had established complaint procedures and set up hotlines to address complaints of corruption or mishandling. Since 2003 new measures had been in place to facilitate family unity. For example, when both spouses had received permits, the application for children under 18 to join them was normally processed in less than one year.

64. **Mr. Allcock** (Hong Kong Special Administrative Region) said that, from a legal standpoint, deportation or removal orders could not be used for de facto extradition to the mainland. Under a deportation or removal order the person concerned was required to leave the Region but was not obliged to go to any particular jurisdiction. If an individual under a deportation or removal order were to be forcibly

removed to the mainland — something that had not happened to date — he or she could bring a habeas corpus appeal. It was theoretically possible for someone to be prosecuted on the mainland for offences committed in the Region, since the mainland courts had concurrent jurisdiction. To his knowledge, that had only happened in two highly publicized cases. The desirability of clear procedures for rendition to the mainland had been seriously debated in the Region and discussed with mainland authorities, but it would require legislation to be enacted.

65. The reservation to article 13 of the Covenant had actually been formulated by the United Kingdom with respect to Hong Kong; it would be reconsidered by the Chinese Government in the context of China's decision to accede to the Covenant. Lastly, with regard to the question about refoulement, individuals facing removal or deportation orders often appealed for judicial review on grounds other than the threat of torture, and the courts were developing jurisprudence.

66. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that her delegation shared the Committee's view that the government of the Region should safeguard the rights and benefits of foreign domestic workers. Of over 2,000 labour complaints brought by domestic workers, only 10 per cent had related to underpayment. The penalty for not paying the minimum wage was severe, involving both a fine and one year's imprisonment, and it was about to be increased.

67. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region) said he could assure the Committee that the police were vigorously investigating the incidents of vandalism against legislators in the lead-up to the 2004 elections. Because the investigations were ongoing, he was not at liberty to divulge the details.

68. Under the two-week rule, foreign domestic workers must leave the Region within two weeks of the termination of their employment contracts, and the cost of the return flight must be borne by their employers. The rationale was that they had been admitted for that job only, not to perform other work. While working in the Region, foreign domestic workers enjoyed the same access as Hong Kong residents to the services of the Labour Department, including the investigation of complaints, conciliation and legal aid in bringing a claim before the Labour Tribunal.

69. **The Chairperson**, summing up the discussion, said that on the positive side the delegation's report and oral responses had been particularly thorough and thoughtful, and its efforts at dissemination were to be commended. The Committee appreciated the opportunity it had had over the years to have sustained contact with non-governmental organizations in the Region and was pleased at the importance they had assumed in civil society. Another positive aspect was the Region's judicial system. The Committee was particularly pleased that the Court of Final Appeal expressly applied and referred to the provisions of the Covenant in arriving at its decisions. It was also commendable that the Region intended to assist UNHCR.

70. The areas of concern, which the delegation would see reflected in the Committee's concluding observations, had to do with the fragility of democracy in the political structure of the Region. The Committee had not been satisfied with the answer to its questions on the intimidation of certain legislators. There appeared to be threats to the freedom of the press, as exemplified by the introduction of the National Security Bill, which happily had been withdrawn. The Committee also regretted that there was no independent human rights authority, which might, among other things, receive complaints against the police. In 1999 the Committee had been told that appeals to the Standing Committee of the National People's Congress for legal interpretation of the Basic Law were exceptional, but such interventions had occurred quite frequently since then. What concerned the Committee were the instances in which the Standing Committee intervened through its interpretation of the Basic Law in judicial decisions, as in the case of the Director of Immigration v. Chong Fung Yuen. It was difficult to reconcile such intervention by a political body in judicial decisions with article 14 of the Covenant. There was also the issue of the differing interpretations of the scope of the reservation to article 25 of the Covenant with regard to an elected legislature and other questions regarding collective bargaining, discrimination, one-way permits, telecommunication interceptions and expulsion of aliens.

71. **Mr. Allcock** (Hong Kong Special Administrative Region) pointed out that the Chong Fung Yuen case had been decided by the Hong Kong Court of Final Appeal; there had been no intervention by the Standing Committee.

72. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), in closing, said that in her previous job as head of the Hong Kong Economic and Trade Office in London she had become keenly aware that the attraction of the Hong Kong Special Administrative Region to investors rested on the rule of law, an independent judiciary, freedom of speech and expression, an honest and efficient government and a level playing field. Those elements, consonant with the Covenant and guaranteed by the Basic Law, were the cornerstone of the Region's prosperity, and its government intended to do its utmost to strengthen Covenant rights for all its residents.

The meeting rose at 1.05 p.m.